

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Capri Beachwear, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Corporation Franchise Tax :  
under Article 9A of the Tax Law  
for the Fiscal Years Ended 4/30/69,70,71,73,74,75. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Decision by certified mail upon Capri Beachwear, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Capri Beachwear, Inc.  
303 Smith St.  
Farmindeale, NY 11735

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
9th day of January, 1981.

Connie G. Hagelund

Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Capri Beachwear, Inc. :

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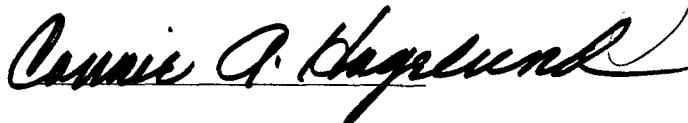
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Decision by certified mail upon Leonard Reade the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

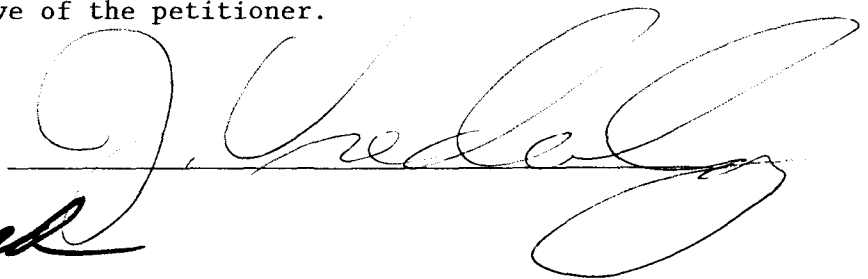
Mr. Leonard Reade  
Rosen & Reade  
666 Fifth Ave.  
New York, NY 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
9th day of January, 1981.

  
Carrie P. Haglund

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 9, 1981

Capri Beachwear, Inc.  
303 Smith St.  
Farmindeale, NY 11735

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Leonard Reade  
Rosen & Reade  
666 Fifth Ave.  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|                                                |   |          |
|------------------------------------------------|---|----------|
| In the Matter of the Petition                  | : |          |
| of                                             | : |          |
| CAPRI BEACHWEAR, INC.                          | : | DECISION |
| for Redetermination of Deficiencies or for     | : |          |
| Refunds of Franchise Tax on Business Corpora-  | : |          |
| tions under Article 9-A of the Tax Law for the | : |          |
| Fiscal Years Ended April 30, 1969, 1970, 1971, | : |          |
| 1973, 1974 and 1975.                           | : |          |

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Capri Beachwear, Inc., 303 Smith Street, Farmingdale, New York 11735, filed a petition for redetermination of deficiencies or for refunds of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ended April 30, 1969, 1970, 1971, 1973, 1974 and 1975 (File No. 20791).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 20, 1979 at 11:00 A.M. Petitioner appeared by Rosen & Reade, Esqs. (Leonard Reade, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner may carry back and carry forward a bad debt loss on an account with a subsidiary corporation.

FINDINGS OF FACT

1. Petitioner, Capri Beachwear, Inc., filed timely New York State Corporation Franchise Tax Reports for the fiscal years ended April 30, 1969, 1970, 1971, 1972, 1973, 1974 and 1975.

2. On September 14, 1972, petitioner filed three Claims for Credit or Refund of Corporation Tax Paid as follows:

| <u>fiscal year ended</u> | <u>amount</u> |
|--------------------------|---------------|
| 4/30/69                  | \$30,243.06   |
| 4/30/70                  | 32,271.50     |
| 4/30/71                  | 41,022.18     |

3. On March 30, 1977 these claims for refund were denied.

4. On May 6, 1977, Notices of Deficiency were issued as follows:

| <u>period ended</u> | <u>tax</u>  | <u>interest</u> | <u>total</u> |
|---------------------|-------------|-----------------|--------------|
| 4/30/73             | \$25,283.00 | \$7,218.29      | \$32,501.29* |
| 4/30/74             | 44,533.00   | 9,374.20        | 53,907.20    |
| 4/30/75             | 14,196.00   | 2,383.65        | 16,579.65    |

(\*A separate credit of \$560.88 was allowed on the 4/30/73 Notice.)

5. Petitioner subsequently filed a timely perfected petition for revision of these determinations.

6. During the years in question, American Dune Deck Sportswear Corp. was a wholly-owned subsidiary of petitioner.

7. In petitioner's fiscal year ended April 30, 1972, it sustained a bad debt write off of approximately \$4.5 million from an uncollectible account it had with American Dune Deck Sportswear Corp. (hereinafter "Dune Deck") which went out of business. Petitioner is attempting in this proceeding to carry back to fiscal years 1969, 1970 and 1971 and to carry forward to fiscal years 1973, 1974 and 1975, \$2,340,486.00 of this loss.

8. From May, 1969 through April, 1972 petitioner kept an account with Dune Deck in which it charged Dune Deck for labor costs paid for by petitioner and performed on behalf of Dune Deck, for piece goods purchased by petitioner for Dune Deck, for cash advanced by petitioner to Dune Deck, and for overhead costs (such as rent and maintenance expenses) allocated to Dune Deck. Monthly

debits to the Dune Deck account were made in each of the aforementioned categories,\* with the exception of cash advances. The cash advanced column reflected debits for twenty-three of the thirty-six months from May, 1969 through April, 1972.

On the credit side, Dune Deck made repayments to petitioner, in cash, in the following months: January through May, 1970 and January through April, 1971. Thus, no payments were made by Dune Deck on said account during the periods May through December 1969, June through December 1970, and May 1971 through April 1972.

By April 30, 1972, Dune Deck owed \$4,590,604.70, which it could not and did not pay; this is the loss which petitioner sought to carry back and carry forward for franchise tax purposes.

9. The usual credit terms in the industry contemplated repayment within sixty to one-hundred twenty days.

#### CONCLUSIONS OF LAW

A. That the definition of subsidiary capital for purposes of Article 9-A is supplied by section 208.4 of the Tax Law, as follows:

"The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument...". (Emphasis supplied.)

B. That losses from subsidiary capital deducted in computing Federal taxable income are to be excluded in computing the New York entire net income of a corporation. Section 208.9(a)(1). An exception is made, as aforesaid, for accounts receivable in the ordinary course of business.

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\* A debit was shown for piece goods, labor and overhead in each month with the following exceptions: there were no debits for piece goods in May 1969, August 1969, September 1969, September 1971, or March 1972; there was no debit for labor costs in April 1972.

C. That the indebtedness of Dune Deck to petitioner constituted subsidiary capital, and that the uncollectible account petitioner had with its subsidiary was a loss from subsidiary capital and not includible in the term "entire net income". Matter of Magic Marker Corp., State Tax Commission, December 2, 1971; Matter of Rubel Corp., State Tax Commission, April 8, 1969.

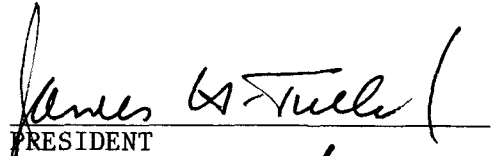
D. That the account between petitioner and Dune Deck was not an account receivable acquired in the ordinary course of business; the liabilities of Dune Deck were not repaid to the parent corporation in accordance with the general terms in the industry. Said account therefore did not qualify under the exception provided by section 208.4.

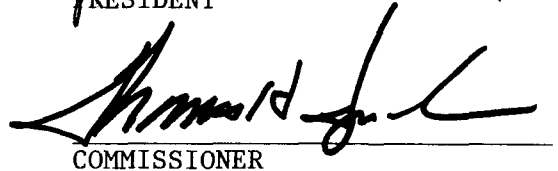
E. That the petition and claims for refund of Capri Beachwear, Inc. are denied, and the notices of deficiency issued May 6, 1977 are sustained in full.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER